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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 TONY ROBERTS,

10 Plaintiff,

11 vs.

12 S. HENSLEY, et al.,

13 Defendants.

CASE NO. 15cv1871-LAB (BLM)

ORDER:

**DENYING DEFENDANT’S MOTION IN
LIMINE TO HAVE PLAINTIFF
SHACKLED AND IN PRISON GARB
[Dkt. 112];**

**GRANTING PLAINTIFF’S MOTION TO
ALLOW PLAINTIFF TO WEAR
CIVILIAN CLOTHES WITHOUT
HANDCUFFS OR SHACKLES [Dkt.
119]**

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19 Defendant N. Sabati moves *in limine* for an order requiring Plaintiff Tony Roberts,
20 an inmate currently incarcerated with the California Department of Corrections and
21 Rehabilitation (“CDCR”), to be shackled and appear in prison garb during his upcoming
22 trial. Dkt. 112. Roberts opposes the motion and brings a competing motion to allow him
23 to appear in civilian clothing and free of shackles. Dkt. 119.

24 The parties addressed this same issue at the pretrial conference, and the Court
25 noted that “absent a compelling reason, the Court will not permit [Roberts] to be shackled
26 or appear in prison garb.” Dkt. 100. The Court’s position has not changed. Shackling an
27 inmate in a civil action is the exception in this Circuit, not the rule. See, e.g., *Brown v.*
28 *Kavanaugh*, 2013 WL 1124301, at *2 (E.D. Cal. 2013) (“When a civil action involves an

1 inmate, the court should be wary of requiring the inmate to appear in restraints.”) (citing
2 *Tyars v. Finner*, 709 F.2d 1274, 1284–85 (9th Cir.1983)). Two factors guide the district
3 court in deciding whether an inmate should appear in shackles: “First the court must be
4 persuaded by compelling circumstances that some measure was needed to maintain the
5 security of the courtroom. Second, the court must pursue less restrictive alternatives
6 before imposing physical restraints.” *Morgan v. Bunnell*, 24 F.3d 49, 51 (9th Cir.1994).

7 Defendant points to several circumstances that, in her view, warrant shackling
8 here. First, Roberts is serving a life sentence for a series of violent felonies, including
9 attempted murder, assault with a firearm on a peace officer, kidnapping to commit
10 robbery, and robbery. Second, Roberts has received three prison “rules violation reports”
11 while incarcerated. Two of these incidents involved fighting and the other involved
12 making lewd comments to an officer. Finally, Defendant argues that Roberts “could
13 scare, threaten, or injure the court staff, jurors, attorneys trying the case, or correctional
14 officers while trying to flee. If [Roberts] is able to successfully flee, by for example, taking
15 someone hostage, then he will be a danger to the public at large.”

16 The Court does not dispute that Roberts’ underlying offenses are serious, but they
17 also occurred nearly 30 years ago. Roberts is now 61 years old and is well-removed from
18 his underlying offenses. The Court finds that given the age of his crimes, Roberts’
19 underlying offenses do not provide compelling circumstances that warrant shackling. His
20 three prison disciplinary violations likewise do not suggest that Roberts is likely to commit
21 violence while in the courtroom.

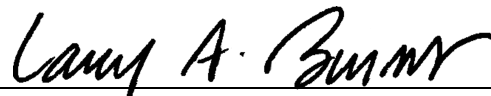
22 Even if these factors did provide a compelling reason to have Roberts shackled,
23 the increased presence of law enforcement presents a “less restrictive alternative” that is
24 suitable to keep order in the courtroom. Defendant’s counsel has informed the Court that
25 two sworn law enforcement officers employed by the CDCR will accompany Roberts to
26 court and will be present at all times while the trial is underway. The Court finds that this
27 arrangement will be adequate to manage any unexpected court security threat
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1 The Court will also permit Roberts to appear in civilian clothing. This clothing is to
2 be provided to him by his attorneys each morning. While the Court acknowledges that
3 appearing in prison garb might make Roberts easier to capture in the event he flees, this
4 remote risk is significantly outweighed by the prejudicial effect of forcing him to appear
5 each day in front of the jury clothed in prison garb. *See, e.g., United States v. Olvera*, 30
6 F.3d 1195, 1196 (9th Cir. 1994) ("Compelling a defendant to appear at trial in prison garb
7 [in a criminal case] is impermissible because the constant reminder of the defendant's
8 incarcerated status may affect jurors' perception of him or her as a wrongdoer.").
9 Constitutional protections are weaker in a civil case than a criminal case, but similar logic
10 holds here.

11 For the reasons above, Defendant's motion to have Roberts shackled and appear
12 in prison garb is **DENIED** and Plaintiff's cross-motion is **GRANTED**. Dkts. 112, 119.¹
13 Plaintiff's attorneys shall ensure that Roberts is provided with civilian clothes each
14 morning of trial.

15 **IT IS SO ORDERED.**

16 Dated: March 14, 2019

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18 **HONORABLE LARRY ALAN BURNS**
19 Chief United States District Judge
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27 ¹ This order does not dispose of Plaintiff's other request in Dkt. 119 to preclude evidence
28 related to Roberts' previous convictions. This request and the remainder of the parties'
motions in limine will be decided at argument on Tuesday, March 19, 2019 at 9:00 A.M.